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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,544	07/10/2003	Steven M. Madey	5827-002	4300

20575 7590 11/23/2005

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EXAMINER

LINDSEY, RODNEY M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,544	MADEY ET AL.	
	Examiner	Art Unit	
	Rodney M. Lindsey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-34 is/are pending in the application.
- 4a) Of the above claim(s) 10-13, 15, 18-20, 23, 26, 30, 31, 33 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 14, 16, 17, 21, 22, 24, 25, 27-29 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the species of Figures 6 and 7 in the reply filed on March 24, 2005 is acknowledged.
2. Claims 10-13, 15, 18-20, 23, 26, 30, 31, 33 and 34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 24, 2005.
3. In response to applicant's remarks drawn to the withdrawal of claims 10-13, 23, 26, 30, 31, 33 and 34, as such claims do not read on the elected species of Figures 6 and 7 their withdrawal by the examiner is maintained to be proper.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 6-9, 14, 16, 17, 21, 22, 24, 25, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama et al. in view of Hong '566. With respect to claim 1 note for instance Figure 2 of Nakayama et al. and inner helmet layer 24, outer helmet layer 21, 23 and interface layer 25. With respect to claim 24 note Figure 2 and the joined inner helmet layer 24, outer helmet layer 21, 23 and interface layer 25. With respect to claims 1 and 24 Nakayama et al. do not teach the helmet being a bicycling helmet. Hong '566 teaches that motorcycle helmets

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may also function as bicycling helmets (see column 3, lines 23-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the helmet of Nakayama et al. as a bicycling helmet in view of such teaching by Hong '566 of the interchangeable function of motorcycle and bicycling helmets to achieve a like function of protecting a user's head. With respect to claim 2 note the hard shell 21 and the energy absorbing layer 24 of Nakayama et al. With respect to claim 3 note the microshell 21, first energy absorbing layer 23 and second energy absorbing layer 24 of Nakayama et al. With respect to claim 6 note the spherical curvature in the Figure 2 embodiment of Nakayama et al. With respect to claim 7 note the uniform thickness of the interface layer 25 as shown in Figure 2 of Nakayama et al. With respect to claim 8 note the gap filled by the interface layer 25 as shown in Figure 2 of Nakayama et al. With respect to claim 9 note the vents per paragraph [0044] of Nakayama et al. With respect to claim 14 inherently in Nakayama et al. the interface layer would respond non-linearly to tangential forces with forces that would cause inelastic change being larger than those that would only cause elastic change. With respect to claims 16 and 17 note paragraph [0025] of Nakayama et al. and the use of gels. With respect to claim 21 note paragraph [0008] of Nakayama et al. and the rotational and perpendicular components of force absorbed. With respect to claim 22 note the inherent forward displacement capability of the outer helmet layer like shown in Figure 8 of Nakayama et al. With respect to claim 25 inherently in Nakayama et al. the interface layer would respond to forces that would cause inelastic change in a manner different than to those that would only cause elastic change. With respect to claim 27 note the spherical curvature in the Figure 2 embodiment of Nakayama et al. With respect to claim 28 note paragraph [0008] of Nakayama et al. and the rotational and perpendicular components of force absorbed.

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6. Claims 4, 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama et al. in view of Hong '566 as applied to claim 1 above, and further in view of Griffiths. With respect to claims 29 and 32 note Figure 2 of Nakayama et al. With respect to claims 4, 29 and 32, Nakayama et al. do not teach the use of a helmet retention system. Griffiths teaches old the use of a helmet retention system as at 13. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the helmet of Nakayama et al. with the chin straps 13 of Griffiths to achieve the advantage of enabling retention of the helmet on a wearer's head.

Response to Arguments

7. Applicant's arguments filed October 11, 2005 have been fully considered but they are not persuasive. Contrary to applicant's remarks prevalent in the art of helmets is the teaching of using a helmet both for bicycling and motorcycling. Further contrary to applicant's remarks paragraph [0040] of Nakayama et al. clearly supports the relative rotation of the outer and inner helmet liners. The broad recitation of a large displacement does not define over that displacement in Nakayama et al. as large is a mere term of degree easily met by Nakayama et al. In response to applicant's remarks drawn to claim 22, claim 22 is maintained to not set forth any structure not found in Nakayama et al. Nakayama et al.'s full face portion would not impact the neck as it is shown in the drawings to be adequately spaced from the possible location of a user's neck. In response to applicant's remarks drawn to claims 4, 29 and 32 Griffiths clearly teaches interiorly mounting the chin straps 13 (see column 2, lines 39-42). Likewise the chinstraps would be interiorly mounted in the modified helmet of Nakayama et al.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the helmets functional for both bicycling and motorcycling of Hosaka, Hong '329, Bernstein, Ewing et al., Hong et al. and Tao et al.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

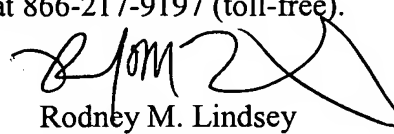
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'RML', is written over the printed name of Rodney M. Lindsey.

Rodney M. Lindsey
Primary Examiner
Art Unit 3765

rml